

Synopsis of the criminal opinions by the Mississippi Court of Appeals on June 10, 2008.

Morgan v. State, No. 2007-KA-00608-COA (Miss.App. June 10, 2008)

CRIME: Sexual Battery

DECISION: Affirmed

COUNTY: Jasper

MAJORITY: King (Irving and Griffis concur in result only)

FACTS: Stanley Morgan was convicted of sexual battery and was sentenced to 30 years. Morgan lived with S.P. and would babysit her children while S.P. worked the night shift. After S.P. became pregnant, S.P.'s oldest child, 12 yr old C.E., testified that Morgan began to sexually abuse her. C.E. testified that 30 yr old Morgan forced her to engage in sexual intercourse with him on several occasions between October 2003 and September 2004. C.E. testified Morgan threatened to rape her mother if C.E. did not have sex with him. In September of 2004, C.E. told her mother about the rapes. S.P. pressed charges and Morgan was arrested. A medical examination showed C.E. had a torn and eroded hymen, indicating she had been subject to significant vaginal penetration. Both C.E. and S.P. testified positive for chlamydia.

HELD: The trial judge did not err in allowing the testimony of a pediatrician who stated that C.E.'s history indicated, "Her mother's ex-boyfriend was sexually abusing her." The doctor stated she did not know who penetrated C.E. The statement regarding C.E.'s history is the type of information doctors rely upon to diagnose and treat patients. The doctor's testimony was therefore relevant and admissible, as it pertained to C.E.'s treatment.

==>The trial judge did not err in denying a defense instruction informing the jury they should closely scrutinize the uncorroborated testimony of a child victim. There is not authority for granting such an instruction.

==>The evidence was sufficient to support the verdict. Morgan claimed that the State failed to produce any physical evidence of abuse and never proved he had chlamydia. C.E. testified Morgan forced her to engage in sexual intercourse and oral sex. A physical examination showed C.E. had been subject to vaginal penetration. Both S.P. and C.E. had chlamydia. S.P. testified Morgan was the only person with whom she had sexual relations during that time. C.E.'s testimony was not discredited or contradicted by other credible evidence.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO48408.pdf>

Taylor v. State, No. 2007-CA-00213-COA (Miss.App. June 10, 2008)

CRIME: PCR – Sale of Morphine

DECISION: Dismissal of PCR affirmed

COUNTY: Tate
MAJORITY: Barnes

FACTS: Paul Taylor pled guilty in June of 2005 to three counts of selling morphine and was sentenced to three concurrent terms of 19 years, with 9 years suspended on each count. Through counsel, Taylor filed a PCR in November of 2006, alleging violations of Taylor's constitutional rights. The petition alleged Taylor had mental problems and an exam was required to determine whether the court had jurisdiction to adjudicate his guilt. Without attaching any affidavits, Taylor request a private doctor examine and treat him. The trial judge dismissed the petition as insufficient, as it contained no affidavits or a sworn oath by Taylor of the facts within his personal knowledge. Instead of correcting the deficiencies, Taylor, again through counsel, appealed.

HELD: The trial judge did not err in dismissing the PCR without prejudice. Taylor may refile a procedurally proper motion before the statute of limitations expires.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO48405.pdf>

Dobbs v. State, No. 2007-CP-00900-COA (Miss.App. June 10, 2008)

CRIME: PCR – False Pretenses and Simple Assault on a LEO

DECISION: Denial of PCR affirmed

COUNTY: Marshall

MAJORITY: Chandler

FACTS: Dennis Dobbs was incarcerated for false pretenses and simple assault of a law enforcement officer. On July 26, 2006, he filed a petition for an order to show cause in the circuit court. Dobbs alleged he was housed in inhuman conditions at the Marshall County Correctional Facility. He complained the windows would not open and there were no air conditioners. He later amended the petition to include the facility lacked a fire sprinkler system. The circuit court treated the petition as a PCR and denied relief. Dobbs appealed.

HELD: None of Dobbs's allegations fall under any of the grounds for post-conviction relief under § 99-39-5(1). Since he was not entitled to any relief under the statute and the trial judge treated the petition as a PCR, it was proper for the court to deny relief. Dobbs claimed his petition was actually a claim under 42 U.S.C. §1983. However, Dobbs never filed any such compliant or any corresponding summons. Dobbs must file a compliant to institute a civil action. "Whether Dobbs properly asserted grounds sufficient to warrant relief under section 1983 is irrelevant because he did not file a compliant asserting those grounds." Dobbs also improperly filed his motion against the State. Dobbs's allegations were without merit.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/Opinions/CO48402.pdf>

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